



Cited

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Clearwater Hous. Auth. v. Future Capital Holding Corp.

Court of Appeal of Florida, Second District

November 8, 2013, Opinion Filed

Case No. 2D12-5515

Reporter: 126 So. 3d 410; 2013 Fla. App. LEXIS 17852; 38 Fla. L. Weekly D 2323; 2013 WL 5951583

CLEARWATER HOUSING AUTHORITY, a Public Body Corporate and Politic, Appellant, v. FUTURE CAPITAL HOLDING CORPORATION, a Georgia Corporation; JIM ETTER PARKER A.I.A., INC., d/b/a PARKER ASSOCIATES; JIM PARKER, AIA, an Individual; SNOWDEN ENGINEERING, INC., a foreign Corporation; MERVIN SHOWDEN, an Individual; KEVIN SNOWDEN, an Individual; GM TILE & ROOFING OF FLORIDA, INC., a Florida Corporation; GM TILE & ROOFING, INC., a Florida Corporation; GM TILE & ROOFING OF TAMPA, INC., a Florida Corporation; R.S. THOMASON BUILDING CORPORATION, a foreign Corporation; THE MORGANTI GROUP, INC., a Florida Corporation; DAPAU ENTERPRISES, INC., a Florida Corporation; FARRIS FLOORING, INC., a Florida Corporation; FLORIDA DESIGN CONSULTANTS, INC., a Florida Corporation; TERRA EXCAVATING, INC., a Florida Corporation; ALLENS STEEL PRODUCTS, INC., a Tennessee Corporation; BLUELINE MECHANICAL, INC., a Florida Corporation; and GENERAL ALUMINUM CORPORATION, a Texas Corporation, Appellees.

Subsequent History: Released for Publication December 26, 2013.

Prior History: [**1] Appeal from the Circuit Court for Pinellas County; John A. Schaefer, Judge.

Core Terms

plat, genuine issue of material fact, improvement to real property, statute of repose, summary judgment, parties

Case Summary

Overview

HOLDINGS: [1]-The trial court erred by granting the construction company summary judgment in the property owner's action for negligence and construction defects because affidavits submitted by the parties raised genuine issues of material fact existed as to when the contract was completed under the parties' contract, and therefore the court could not determine whether the action was barred by [§ 95.11, Fla. Stat.](#)'s 10-year statute of repose.

Outcome

Judgment reversed; case remanded.

LexisNexis® Headnotes

Civil Procedure > ... > Affirmative Defenses > Statute of Limitations > Statutory Construction

Governments > Legislation > Interpretation

Governments > Legislation > Statute of Limitations > General Overview

HNI In Florida , limitations defenses are not favored. Accordingly, when there is a reasonable doubt as to legislative intent, the preference is to allow the longer period of time.

Real Property Law > Torts > Construction Defects

Torts > Procedural Matters > Statute of Repose > General Overview

HN2 See [§ 95.11, Fla. Stat.](#)

Real Property Law > Torts > Construction Defects
Torts > Procedural Matters > Statute of Repose > Professional Malpractice

HN3 Under the fourth prong of the repose provision of [§ 95.11, Fla. Stat.](#), the repose period commences on the latest date that any of the listed entities—the professional engineer, registered architect, or licensed contractor—completed or terminated their contract.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes
Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

HN4 Summary judgment is improper if the record reflects even the slightest doubt that a genuine issue of material fact might exist.

Counsel: Amy S. Fariior and Raymond T. Elligett, Jr. of Buell & Elligett, P.A., Tampa, and David Ferrentino and Kevin Dees of Allen Dell, P.A., Tampa, for Appellant.

Barbara J. Taggartof Peterson Bernard, West Palm Beach for Appellee Future Capital Holding Corporation, a Georgia Corporation. No appearance for remaining Appellees.

Judges: KHOUZAM, Judge. KELLY and SLEET, JJ., Concur.

Opinion by: KHOUZAM

Opinion

[*411] KHOUZAM, Judge.

In 1998, numerous entities, including Future Capital Holding Corporation, were hired to construct Mainstreet Apartments in Clearwater. Clearwater Housing Authority later purchased the property. The certificate of occupancy was issued and Clearwater Housing took possession

of the property in 2000, but the final plat was not submitted by the engineers on the project—Florida Design Consultants—until 2003. In 2009, Clearwater Housing filed suit for negligence and construction defects, naming Future Capital as a defendant in 2011. The circuit court granted summary judgment in favor of Future Capital, determining that the ten-year statute of repose found in [section 95.11\(3\)\(c\), Florida Statutes](#) (2011), barred Clearwater Housing’s suit. [**2] Because a genuine issue of material fact remains, we reverse and remand.

At the outset, we note that **HN1** “in Florida, limitations defenses are not favored. Accordingly, when there is a reasonable doubt as to legislative intent, the preference is to allow the longer period of time.” [Allan & Conrad, Inc. v. Univ. of Cent. Fla., 961 So. 2d 1083, 1087 \(Fla. 5th DCA 2007\)](#). This case hinges on the interpretation of [section 95.11](#), which provides in relevant part:

HN2 Actions other than for recovery of real property shall be commenced as follows:

.....

(3) Within four years.--

.....

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a [*412] latent defect, the time runs from the time the defect is discovered or should have been discovered with

the exercise [**3] of due diligence. *In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.*

(emphasis added). *HN3* Under the fourth prong of the repose provision of the statute, the repose period commences on the latest date that any of the listed entities—the professional engineer, registered architect, or licensed contractor—completed or terminated their contract. See [Allan & Conrad, 961 So. 2d at 1087](#); [Downs v. U.S., No. 06-20861-CIV, 2011 U.S. Dist. LEXIS 16441, 2011 WL 688739, at *4 \(S.D. Fla. Feb. 18, 2011\)](#).

Future Capital argued, and the trial court agreed, that the ten-year time period for Clearwater Housing to file suit had run because the certificate of occupancy for the project was issued and the owner took possession in 2000 but the suit was not filed against Future Capital until 2011. Though the final plat was submitted by Florida Design in 2003, Future Capital claimed that [**4] that submission could not be the event that triggered the statute of repose because it did not constitute the “design, planning, or construction of an improvement to real property.”

Clearwater Housing, on the other hand, argued that Florida Design did not complete the contract with its employer, the original owner, until it submitted the final plat in 2003. Thus, Clearwater Housing had until 2013 to file suit. According to Clearwater Housing, the issue is not whether the 2003 final plat constitutes an improvement to real property—while *a cause of*

action must be founded on the design, planning, or construction of an improvement to real property for [section 95.11\(3\)\(c\)](#) to apply, nothing in that section requires *the event that triggers the statute of repose* also be an improvement to real property. We agree that, based on the plain language of the statute, the issue in this case is not whether the 2003 final plat was an improvement to real property but whether it was completed under Clearwater Housing’s contract with Florida Design.

The affidavits submitted by the parties raise a genuine issue of material fact as to when the contract was completed. Robert Wright, Jr., a surveyor for Florida [**5] Design, stated in his affidavit that the design and planning functions related to the project were completed before Clearwater Housing took possession of the property in 2000. He differentiated this work from the surveying work that was done to prepare the plat in 2003. According to Wright, the City of Clearwater demanded the plat of the Mainstreet Apartments Property in 2003 because the original owner of the entire tract wanted to change its plan for an adjacent property. Edward Mazur, Jr., President and Executive Officer of Florida Design, stated in his affidavit that Florida Design had completed work on the project by 2000. In his deposition, he suggested that Florida Design had submitted the final plat in 2003 under contract with the original owner—not the contract with Clearwater Housing. On the other hand, Keith Litzell, P.E., stated in his affidavit that Mazur’s statements were untrue and that Florida Design was performing work on the project at least as late as 2003. Jacqueline Rivera, Chief Executive Officer of Clearwater Housing, also stated in her affidavit that the 2003 final plat was part of Florida Design’s continuing [*413] and required work on the project for the developer [**6] of the Mainstreet Apartments Property. She signed the plat to allow Florida Design to finalize its work because by 2003 Clearwater Housing was the owner of the property.

These affidavits show that a genuine issue of material fact remains in this case. *HN4*

Summary judgment is improper if the record reflects even the slightest doubt that a genuine issue of material fact might exist. [Baldwin v. Nature's Hideaway, Phase I-B Homeowners Ass'n, Inc.](#), 613 So. 2d 1376, 1378 (Fla. 2d DCA 1993). Accordingly, we must reverse and remand for further proceedings.

Reversed and remanded.

KELLY and SLEET, JJ., Concur.